

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Lionell Fraction,

Petitioner,

v.

Civ. No. 04-3030 (JNE/RLE)  
ORDER

Joan Fabian,

Respondent.

Lionell Fraction commenced this action by filing a habeas corpus petition pursuant to 28 U.S.C. § 2254 (2000), challenging his conviction for one count of racketeering, one count of first degree controlled substance crime committed for the benefit of a gang, and three counts of controlled substance crime committed for the benefit of a gang. In a Report and Recommendation dated February 14, 2005, the Honorable Raymond L. Erickson, United States Magistrate Judge, recommended that Fraction's petition be denied. Fraction has filed objections to the Report and Recommendation. The Court has conducted a de novo review of the record. Based on that review, the Court adopts the Report and Recommendation.

An appeal may not be taken from a final order denying a petition for habeas corpus relief under 28 U.S.C. § 2254 without a certificate of appealability (COA). 28 U.S.C. § 2253(c)(1)(A) (2000); Fed. R. App. P. 22(b)(1). Courts cannot grant a COA unless the applicant "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see also Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). In *Slack v. McDaniel*, 529 U.S. 473 (2000), the United States Supreme Court explained how a federal district court should determine an applicant's eligibility for a COA: "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner

must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id.* at 484.

For the reasons set forth in the Report and Recommendation, the Court rejects Fraction's claims on the merits. There is no reason to believe that reasonable jurists would find the resolution of these claims debatable or wrong. Accordingly, Fraction is not entitled to a COA.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Fraction's Petition for a Writ of Habeas Corpus [Docket No. 1] is DENIED.
2. This case is DISMISSED WITH PREJUDICE.
3. Fraction is not entitled to a certificate of appealability.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: June 28, 2005

s/ Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge